

# McLin & Burnsed

Professional Association

Matthew D. Black  
Mark A. Brionez  
R. Dewey Burnsed  
Gary D. Fuchs  
Frederick T. Goller  
Brian D. Hudson  
Stephen W. Johnson  
Eric Langenbrunner  
Stephanie J. McCulloch

ATTORNEYS AT LAW

Walter S. McLin, III  
G. Michael Mahoney  
John D. Metcalf  
Fred A. Morrison  
Richard P. Newman  
Steven M. Roy  
Jeffrey P. Skates  
Phillip S. Smith

May 1, 2007

---

## MEMORANDUM

**TO:** Leesburg City Commission  
**FROM:** Fred A. Morrison  
**SUBJECT:** Ron Stock Contract  
**CC:** Jay Evans, Interim City Manager

---

Last Friday afternoon I received a counter offer from Mr. Stock's attorney in the negotiations toward a voluntary resignation on his part in lieu of termination. The terms he proposes are:

1. He will resign effective May 31, 2007. He will remain on suspension with pay until that date.
2. His severance pay of six months' salary will be paid over the six month period, rather than in a lump sum.
3. The severance pay will be treated as salary and the City will contribute 12% to his pension account for that period, as it did while he was on active employment duty. He will abandon his former demand for an enhanced pension contribution comparable to the amount contributed to the police pension fund.
4. The only deduction from his severance will be for unemployment compensation received during the six months, even if he finds other employment (this is actually in accordance with the terms of his contract and not an additional benefit to him).
5. The City will continue to pay his health insurance coverage for the lesser of six months or until he is covered by insurance provided by a new employer, so that he retains continuous health insurance coverage for that period.
6. The City Commission and staff will not give any negative references for Mr. Stock, either directly or indirectly "by the grapevine," and will agree not to disparage him to the press, the public or other potential employers. He will agree likewise not to disparage the City, the Commission or staff.
7. Finally, he still wants the City to pay his legal fees. I asked how much that might be and did not receive a definite answer, only that the fees are "currently less than \$5k" and that if this is resolved quickly the attorney anticipates another 5-10 hours to finalize the settlement. I do not know his

billing rate but assuming a rate of \$250.00 per hour and current fees of \$5,000.00, the total would be around \$7,500.00.

If this proposal is not acceptable, I will continue the negotiations but would like to ask that the Commission make clear which portions it does not like so in my discussions with Mr. Stock's counsel I will know the will of the Commission on those points.

But for the seventh and final issue, I think the proposal generally comports with the comments of the individual Commissioners following Mr. Stock's suspension. Thus I want to discuss the question of paying his legal fees in greater detail. The starting point has to be the contract. Under Florida law, absent a provision in statute or contract, the loser in a lawsuit is not obligated to pay the attorneys' fees of the winner. Mr. Stock's contract does not have a fee shifting provision in it, so if he sues on the contract the City would not be exposed to potential payment of his legal bills.

However, there are still economic issues to be considered. Litigation is expensive even if you do not face paying the legal fees of the other party. It is also time consuming, unpleasant and would be disruptive to the orderly operation of the City. The outcome of litigation cannot be predicted with any certainty. It is far better to negotiate a settlement than to leave your fate in the hands of a judge or jury. Furthermore, if litigation does ensue over Mr. Stock's termination, the court will refer the case to mediation at some point and a settlement is likely then, but with the added expenses of the mediator, attorneys' fees paid in the interim, and the higher cost any settlement would almost certainly entail. A case in point is Mount Dora's termination of Ms. Bernice Brinson as its City Manager. She filed suit and ultimately the City paid considerably more to her than it would have if it had only worked out a compromise with her at the time of her termination.

Simply put, legalities and moral justifications aside, it can be and often is cheaper to pay than to litigate. This is why quite a number of lawsuits over slip and fall or minor accidents are settled by the insurance companies. Even if the liability of the insured is in doubt, it would cost more to fight it in court than to pay the damages being demanded. I do not mean to minimize your consideration of the contract terms and what each of you may feel is right or wrong as far as payment of Mr. Stock's legal fees is concerned. I do want to suggest that the ultimate decision is one you should also consider as a business decision, asking what is less expensive for the City and its taxpayers. If the Commission ultimately agrees to all the conditions then the matter can be concluded by approval of a final settlement agreement at your meeting on May 28, and the hearing on Mr. Stock's termination may be canceled. If you reject the seventh or any of the other conditions, then I will do my job, go back to Mr. Stock's lawyer, and try to convince them to settle on terms the Commission deems acceptable, failing which the termination process will continue.

If the dispute is not resolved, I also need to make you aware that Mr. Pilacek, Mr. Stock's counsel, is not able to attend the scheduled hearing on May 21 due to a jury trial he is already obligated to attend in Orange County on that date. He has requested a postponement of the hearing but has not yet given me any alternative hearing dates. If I have those dates by the meeting on May 14 I will provide them to you that evening for your consideration. In the meantime efforts toward an amicable resolution of the dispute will continue.

If any of you have questions or wish to discuss this with me prior to the meeting on May 14, please contact my assistant Priscilla Duttenhaver who can put you in touch with me as I will be out of the office on Thursday and Friday.